



Department of Law Monthly Report

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Collections & Support

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The Collections Unit had a busy month in April. In addition to welcoming Linda Reagan to her new position as litigation assistant for civil collections, the unit opened two new OSHA and APOC penalty files and closed one OSHA penalty file. On the criminal side, the unit sent 33 letters responding to inquiries from defendants and courts regarding payment agreements and other collection issues. We entered into payment agreements with six defendants for payment of criminal judgments. Quarterly collection reports were prepared for the Alaska Court System and the Department of Corrections.

VICTIM RESTITUTION PROJECT GROWING

The victim restitution project continues to grow. In April, the unit received 72 criminal restitution judgments and four juvenile restitution judgments for collection, 23 of which were returned to the issuing courts due to insufficient information. Initial notices were sent to 109 recipients in the remaining 49 criminal cases and 10 recipients in the juvenile delinquencies. Demand letters were sent to 50 restitution debtors. Eleven judgments were paid in full and

Satisfactions of Judgment were filed. Our office received 37 payments totaling \$11,424.75 toward criminal restitution judgments and two payments totaling \$122.00 toward juvenile restitution judgments in April. We requested 21 disbursement checks, totaling \$5,490.31, be issued to recipients.

CSED LICENSE SUSPENSION CASE BEFORE THE COURTS

AAG Connie Carson represented CSED in response to a child support obligor's petition for expedited relief from CSED's license suspension division. CSED had entered into two prior payment agreements with the obligor, Thomas Hall, and he had not honored either agreement. Mr. Hall wanted to enter into a third payment agreement. CSED declined. A hearing was held on April 25, 2002, before Master Preston. Ms. Carson questioned Mr. Hall and the licensing supervisor for CSED. Ms. Carson outlined the limited statutory criteria that could be considered by the court and argued that Mr. Hall's petition should be denied because he had not complied with the best effort requirement under the statute. Mr. Hall explained how suspension of his license would effect him, and he promised the court he would pay \$1,000 per month effective immediately. The court granted Mr. Hall's petition and ordered the release of his license, but set a status hearing for June 6, 2002 to confirm his compliance with the payment agreement.

AGENCIES SHARING INFORMATION TO IMPROVE CHILD SUPPORT EFFORTS

In the area of information sharing between CSED and DFYS, channels have been opened so that termination, adoption, removal, and other orders affecting legal custody and placement of children are reaching CSED through the Attorney General's Office. In addition, a policy is now in place to determine what information from CSED's case files can be shared with DFYS, and a system to

disseminate the information has been established. After a period of adjustment and monitoring in Anchorage, these policies and procedures are expected to be implemented in other cities in Alaska. A meeting among the Attorney General's Office, CSED, DFYS, the Division of Juvenile Justice, and the Court System is set for May 28th to discuss how to proceed.

Commercial Section

"RIPPIE WORLD" ORDERED TO PAY MONEY TO CHARITIES

James Stewart was a professional charitable gaming operator who conducted pull-tab games on behalf of charities under the name, "Rippie World." By law, an operator must guarantee that the expenses of his pull-tab operation do not exceed 70% of the adjusted gross income of pull-tab activities. The operator must repay to charities any expenses that exceed the cap plus interest in the amount of 1.5% per month. In 1995, Rippie World's pull-tab expenses exceeded the expense cap by \$186,020. Mr. Stewart tried to avoid responsibility by having the charities pay the wholesale price of Rippie World's pull-tab games. The Department of Revenue gaming unit rejected this defense and ordered him to repay the charities \$186,020 plus interest. When a Department of Revenue hearing officer affirmed the order, Mr. Stewart appealed the matter to the Anchorage superior court.

On April 8, Judge Wolverton, issued an order affirming the hearing officer decision. As a result, Mr. Stewart owes \$570,153, as of November 1, 2001, to charity. The amount of his debt grows by 1.5% per month. AAG Dan Branch represented the Department of Revenue in the case, *James Stewart v. Department of Revenue*, 3AN-99-3418 Civil.

COURT AFFIRMS DENIAL OF PERMANENT FUND DIVIDEND

In 1999, Kari Wilson was absent from Alaska for 332 days. Such a long absence would make her ineligible for the 2000 Alaska Permanent Fund Dividend unless she could prove that at least 212 days of the absence qualified as "allowable" under state law. For 180 days of her 1999 absence, Ms. Wilson worked as an intern with an engineering firm. In her dividend application, she asserted that the time she spent working as an intern was an allowable educational absence because she had to complete the internship to graduate from Oregon State University. The Permanent Fund Division disagreed and denied her application for the 2000 dividend. Ms. Wilson then asked for an administrative hearing. When the hearing officer affirmed the division's actions, Ms. Wilson appealed the matter to the superior court. On April 17, 2002, Judge Hopwood issued a decision affirming the Department of Revenue hearing officer. AAG Dan Branch represented the Department of Revenue in the case.

Environmental

ALLIANCE FUEL COMPANY SPILL PREVENTION VIOLATIONS RESOLVED

Alliance Fuel Inc. paid \$37,367 in civil assessments to resolve violations of oil pollution prevention and contingency plan requirements at its former Dillingham fuel facility along the Wood River. Alliance and the tank farm owner also agreed to upgrade the tank farm facility if it was ever returned to operation. AAG Breck Tostevin represented DEC in the enforcement action.

ST. GEORGE DELTA FUEL SETTLES C-PLAN VIOLATIONS

St. George Delta Fuel, a joint venture of Delta Western and St. George Chadux Corporation,

resolved a number of contingency plan violations at its St. George facility. In a Compliance Order by Consent with DEC, Delta Fuel corrected a number of tank farm maintenance and spill equipment problems at the facility. In addition, Delta Fuel paid a civil assessment of \$4,300 and, as a supplemental project, agreed to purchase an additional oil spill skimmer for use in the Naknek area for spill response. AAG Breck Tostevin represented DEC in this matter.

Fair Business Practices

OCCUPATIONAL LICENSING

DOCTOR SURRENDERS MEDICAL LICENSE AT DISCIPLINARY HEARING

On April 26, 2002, after four days of testimony in a scheduled five-week disciplinary hearing, the State Medical Board accepted Dr. Steven Nathanson's surrender of his medical license. Prior to the commencement of the hearing, on April 19, 2002, Superior Court Judge Sharon Gleason denied Nathanson's motion for emergency hearing, temporary restraining order, and injunctive relief. Nathanson had sought to have his medical license reinstated (it had previously been suspended), to disqualify the hearing officer, and to postpone the upcoming disciplinary hearing for six months. Judge Gleason ruled that the preponderance of the evidence standard of proof used in the prior summary suspension hearing was constitutional and that all other issues were either barred by the doctrine of exhaustion of administrative remedies or should have been raised in a petition for review.

As part of the surrender, Nathanson promised that he would never seek reinstatement of his medical license in the future (if his license had been revoked after the hearing, he could have sought reinstatement after one year). He also agreed to dismiss with prejudice the above-referenced lawsuit. The surrender culminates

the Division of Occupational Licensing's five-year investigation of Nathanson. AAG Robert Auth represented the Division at hearing and in superior court.

Governmental Affairs

LIEUTENANT GOVERNOR'S BALLOT SUMMARY UPHELD

Plaintiffs challenged the ballot summary for the citizen initiative to move the legislature from Juneau to Wasilla or Anchorage known as "01 CHGE." By statute, the lieutenant governor prepares the ballot summary for an initiative with the assistance of the attorney general. The summary for this initiative will appear on the November general election ballot.

Plaintiffs objected to the part of the lieutenant governor's ballot summary describing how the initiative amends the earlier "FRANK" initiative, regarding the public's right to know the costs of moving the legislature. By statute, the summary must give a true and impartial summary of the law proposed by an initiative in not more than 100 words, and the title of the summary can be no more than six words. The state superior court granted the state's motion for summary judgment, finding that the lieutenant governor's ballot summary was impartial, true, and correct. The court found that the ballot summary accurately described the ballot initiative, and ruled in the state's favor on all claims regarding the summary.

The plaintiffs attempted to raise another claim in this action, which was not raised in their complaint. Plaintiffs seek to compel the state to convene the FRANK Commission immediately to determine the costs associated with the legislative move proposed by 01 CHGE. We opposed the plaintiff's new claim on procedural and substantive grounds. In the order granting the state's motion for summary judgment the judge dismissed plaintiffs'

additional claim without prejudice. Plaintiffs indicate that they will continue to seek resolution of their new claim, and that they may appeal the judge's ruling on the ballot summary to the Alaska Supreme Court. Stay tuned for further developments. AAG Sarah Felix is handling this litigation.

PAT GULLUFSEN MOVES TO CRIMINAL DIVISION

After many years as a member of the Juneau Governmental Affairs section, AAG Pat Gullufsen has moved to the Criminal Division. Pat has been appointed as the deputy attorney general for the Criminal Division, and we wish him well in his new endeavors. We will miss Pat tremendously in the section.

COURT AFFIRMS DEPARTMENT OF ADMINISTRATION IN LEASE AWARD PROTEST

In this Appellate Rule 601 appeal, Judge Torrissi affirmed the decision of Department of Administration Commissioner Duncan in denying a protest appeal of the award of a competitive lease for the Alaska Oil and Gas Conservation Commission offices in Anchorage. A losing offeror, Amir and Mohammad Azimi-Tabrizi (AMAT), protested the award of the lease to K2B Development. AMAT claimed that K2B's proposal was given preferential treatment since K2B did not have a legally enforceable interest in the subject property offered at the time the proposals were opened and that K2B had misrepresented the status of its purchase. The state argued that the solicitation requirements did not require legal ownership in the property at the time the offers were submitted. The court agreed, and found that there was ample evidence provided to the contracting officer to show negotiations between K2B and the owners had been ongoing for a long time and that it was reasonable to conclude that the sale would be completed in time for K2B to perform as required by the contract.

Human Services

TRIBAL COURT ADOPTION CASE RESOLVED

On April 1, 2002, Judge Zervos signed a Stipulation and Order in *Sitka Tribe of Alaska v. State, Dept. of Health and Social Services, Bureau of Vital Statistics*, resolving a declaratory judgment action brought by the Sitka Tribe and adoptive parents seeking issuance of a new birth certificate on the basis of a tribal court order of adoption.

The complaint, filed on March 22, 2001, sought a judgment declaring that the Bureau of Vital Statistics was required to give full faith and credit to the Sitka tribal court order of adoption. The Bureau of Vital Statistics had denied the tribe's request for a new birth certificate because the request from the tribe did not comply with the bureau's regulation regarding the recognition of customary adoptions, which requires the consent of both natural parents to the adoption.

Five months after the case was filed, on August 31, 2001, the Alaska Supreme Court decided *In re: C.R.H.*, 29 P.3d 849 (Alaska 2001), which established that a child custody case could be transferred from state court to tribal court jurisdiction under the Indian Child Welfare Act (ICWA) even if the tribe had not petitioned the BIA to reassume jurisdiction under Sec. 1918 of ICWA. On the basis of the decision in *In re: C.R.H.*, state attorneys concluded that Alaska tribal court orders concerning the child custody and adoption matters addressed by ICWA could be granted full faith and credit, so that a new birth certificate could be issued by the Bureau of Vital Statistics. The analysis of *In re: C.R.H.* made it possible for the state to reach an agreement with the parties and resolve the case by stipulation.

The Bureau of Vital Statistics has issued the birth certificate requested by the parties and is now processing tribal court orders of adoption using the same form and procedures it uses to process an adoption order from a sister state.

SIX JUVENILES ARRAIGNED ON ROBBERY CHARGES

On Friday, May 10, 2002, six juveniles were arraigned on Robbery in the First Degree and Theft in the Second Degree. The charges stem from an incident that occurred on May 9, 2002, at approximately 1:20 p.m. The victim, a 42-year-old female, was returning to her car after just purchasing a birthday present for her husband at Fred Meyers on Muldoon. As the victim was placing the present in her car, she felt someone grabbing her purse. In the process of having her purse ripped from her hands, the victim fell to the ground and hit her head on the pavement. The victim sustained injuries to her head, right eye, right arm and neck.

The attacker ran to a white Ford Explorer that was waiting nearby. Luckily, an individual that was driving through the Fred Meyer parking lot witnessed the robbery and reported it to the Anchorage Police Department. This same witness followed the white Ford Explorer and was able to tell the police the license plate number and the vehicle's location. With this information, the police were able to locate, apprehend and arrest the six juveniles and two adults that were part of the robbery just twenty minutes after it occurred.

All six juveniles are currently detained at McLaughlin Youth Center. AAG Karen Hawkins is prosecuting the case.

DIMOND HIGH SCHOOL VANDAL INSTITUTIONALIZED

On the night of December 30, 2001, K.G. and another minor left a party where they had been drinking and went to Dimond High School. A portion of the high school was undergoing

construction as part of a school district renovation project and had considerable equipment and material on the work-site.

K.G. and his accomplice entered the construction site, and portions of the school, and for reasons known only to them, they began destroying, breaking, and demolishing everything in sight. Three hours later when K.G. and his partner in crime left Dimond High School they had managed to destroy what took 150 skilled craftsman and laborers weeks to construct. Initial estimates placed the damage at \$100,000.00 (which in the final tally was extremely conservative).

K.G. and his accomplice were eventually tracked down through good police work by the Anchorage Police Department. K.G. was arrested and charged with Burglary in the Second Degree and Criminal Mischief in the Second Degree, both C felonies if committed by an adult.

K.G. was adjudicated on the charges on February 4, 2002 and found to be delinquent pursuant to his admission to the charges. K.G. went to a contested disposition on May 7, 2002. The Division of Juvenile Justice, represented by John Darnall of the Attorney General's Office, argued that K.G. should be institutionalized for a period of two years, not to exceed his 19th birthday. K.G. argued that he should be placed on probation and required to complete a residential treatment program (either in-patient or out-patient) and make reasonable restitution payments. DJJ had witnesses testify as to why the minor's recommendation for probation was not realistic given his past background and history.

Additionally, Superintendent of the Anchorage School District, Carol Comeau; Mike Klawitter, ASD Risk Manager; and Terry Fike, Owner Alcan General Contractors testified at the disposition hearing as to the impact on the school district and Alcan General, Inc. To say that Carol Comeau took a hard stance on school vandalism would be an

understatement. Carol Comeau delivered a powerful statement to K.G. about his senseless acts of vandalism and how it affected not only himself but other students. Mike Klawitter informed the court that during his 20 years of risk management in the school district, he has not seen any acts of vandalism that have reached the level of costs that K.G.'s actions have had on the district. Terry Fike stated that the damages related to the vandalism have reached \$240,000.00 (with only a fraction of that being covered by insurance) and will change how construction contractors do future business with the school district. Detective Ken McCoy, the investigating officer from APD was also present.

At the conclusion of the testimony, the court issued an order institutionalizing K.G. for two years, or until his 19th birthday and ordering restitution. A restitution hearing is likely to be held in the future, and is likely to be contested.

ALASKA SUPREME COURT ISSUES MOJ IN FAIRBANKS CINA CASE

The Fairbanks Human Services section received an opinion (MOJ) from the Alaska Supreme Court in *In re: J.D.S.* The court held that AS 47.14.100(e) does not prohibit the placement of a child for adoptive purposes in the home of someone who had been formerly accused of sexual abuse. However, the court held that the guardian ad litem was entitled to challenge the placement under CINA Rule 19.1(b), that the charge of abuse may be a relevant fact for consideration in the best interest determination concerning placement, and that the guardian was entitled to a hearing on this matter.

JOINT SOCIAL WORKER/ATTORNEY TRAINING BENEFITS CINA CASES

On April 25th and 26th many of the attorneys in the Anchorage Human Services section, joined by several human services attorneys from Juneau and Fairbanks, participated in a two-day training session with DHSS social

workers from throughout the state. The program was coordinated through UAA's Family and Youth Services Training Academy. The main focus of the workshop was preparing and presenting effective social worker testimony in all phases of CINA cases; it was structured and facilitated by a dynamic California husband-and-wife team, Frank Tetley, a former judge, and his wife Mary Tetley, a licensed social worker. Everybody learned something (some of us learned a lot!) and we all came away with some useful materials. Perhaps most valuable was the rapport-building with our client agency and its line-level personnel. The social workers really seemed to appreciate our working cooperatively with them to insure the best result for the state's children in our ever swelling body of CINA cases. We look forward to more such cooperative ventures in the future.

Legislation/Regulations

LEGAL REVIEWS OF MAJOR REGULATIONS PROJECTS COMPLETED

During the month of April 2002, the Legislation and Regulations Section completed the legal review of several important regulations projects. The section completed legal reviews of and approved for filing Local Boundary Commission regulations on municipal boundary changes and petition procedures, Alaska Commission on Postsecondary Education regulations on the new Alaska Advantage Loan Program and supplemental education loan program, Board of Fisheries' regulations on numerous topics for upcoming fisheries, Commercial Fisheries Entry Commission regulations on administrative areas and miscellaneous matters, Department of Public Safety regulations on concealed handgun permits, Alaska Labor Relations Agency regulations on collective bargaining among public employees, Department of

Environmental Conservation regulations regarding standard permit conditions in air quality control permits, and other miscellaneous projects.

The section conducted bill review training for 17 assistant attorneys general. The section is now assigning and processing bill reviews for the governor's consideration.

The section is also finalizing the 2002 edition of the Drafting Manual for Administrative Regulations.

Natural Resources

BRIEF FILED IN GEODUCK AQUACULTURE CASE

AAG Blaine Hollis filed the state's appeal brief in *Alaska Trademark Shellfish, LLC, et al. v. State, ADF&G, et al.*, currently pending before the Alaska Supreme Court. The case arises out of an ADF&G decision denying ATS and the other appellants permits to operate aquatic farms for geoduck (pronounced "gooey-duck") clams. The superior court at Ketchikan upheld that part of the ADF&G's decision that denied ATS permits for sites containing significant numbers of wild geoducks, and ATS appealed to the supreme court. The appellants are expected to file their reply brief by the end of May.

LEAK DETECTION SETTLEMENT REACHED WITH BPXA

The Fairbanks Natural Resources section assisted DEC in reaching settlement with BPXA over the leak detection system for its Prudhoe Bay pipelines. State law requires a system that can detect a 1% leak, and BPXA had interpreted the 1% standard as applying to the combined flow entering TAPS. ADEC maintained that the company had to be able to detect a 1% leak in each pipeline segment

feeding into TAPS, which is harder to accomplish. BPXA finally agreed to ADEC's position, and is now improving its leak detection system. BPXA also agreed to a \$300,000 penalty, with half suspended, for its period of non-compliance.

COURT AWARDS ATTORNEY'S FEES IN TRUE NORTH MINE APPEAL

In the True North Mine Project appeal, the superior court awarded full and reasonable attorney's fees to Neighborhood Mine Watch as public interest litigants. The amounts awarded are 54% of the fees requested and 53% of the costs requested. On the day that the court awarded the fees and costs, Neighborhood Mine Watch filed (without leave of the court) a reply to the state's opposition to the motion for attorney's fees and a motion for an additional \$6,960 in attorney's fees.

We are also assisting DNR on several decisions related to the True North project. DNR is finalizing its decision on the mine pit expansion for the project and its decision on remand regarding whether the right-of-way from the mine pit to the processing mill provided the greatest economic benefits to the state and the development of its resources.

IBLA APPEAL WITHDRAWN

On April 18 we withdrew our appeal in State of Alaska, IBLA No. 2002-186, challenging a BLM decision to terminate an easement reserved across Chitina Native Association land under Section 17(b) of ANCSA. A review of historical use surveys showed an insufficient basis to maintain the appeal, which dealt with a portion of the Kotsina Trail near Chitina. In withdrawing the appeal, the state expressly reserved all claims regarding the navigability of the Kotsina River, as well as the assertion that the Kotsina Trail in its entirety is a valid R.S. 2477 right-of-way.

BRIEF FILED IN LIMITED ENTRY APPEAL

On April 26, AAG John Baker filed the state's brief in *Simpson v. CFEC*, a limited entry permit appeal challenging the CFEC's finding on an optimum number of permits for the Northern Southeast Inside Sablefish (Blackcod) longline fishery. The appellant is a permit applicant whose final point classification is too low to receive one of the 73 permits that ultimately will be issued for the fishery. The appeal asserts that the CFEC abused its discretion and also raises various claims under Article VIII of the Alaska Constitution. Among the CFEC's defenses, our brief points out that the optimum number is now established by regulation, which the appellant has failed to challenge.

CRUISE LINE VIOLATIONS FOR 2001 SETTLED

DEC and the AG's office settled with Carnival Cruise Lines this month for its 2001 violation. The state, wishing to recognize the innovative use of the common rail fuel injection system by the Carnival Spirit, suspended the Spirit's one civil penalty (assessed at \$27,500). This suspension, like those similarly suspended in other settlements, is based on Carnival receiving no Notice of Violation during the calendar year 2002.

Similarly, DEC and the AG's office settled with Royal Caribbean and Celebrity Cruise Lines this month for 2001 violations. Royal Caribbean made broad ranging improvements to its fleet including equipping the Vision of the Seas with high efficiency gas turbines that reduce NOx and SOx emissions. Therefore, the state suspended Royal Caribbean's one civil penalty (assessed at \$27,500) under the same conditions.

Celebrity had two civil violations, but has spend a lot of money attempting to reduce emissions. Celebrity implemented two innovative technologies: (1) Flux Wave Cell Technology, which reduces emissions by allowing fuel to

burn more efficiently, and (2) Power Research, Inc.'s Fuel Additive, which is intended to reduce visible smoke emissions. Based on these improvements, the state decided to suspend one penalty and collect \$27,500 for Celebrity's 2001 violations.

LAW HELPS ADF&G WITH DEVELOPING FISHERIES POLICIES

At the direction of the Board of Fisheries, the Department of Fish & Game is drafting policies that will govern the development of new commercial fisheries. Presently, the state does not have a comprehensive approach for bringing new fisheries on line, one that deals with such diverse issues as stock research, conservation, conflicts with other users, limited entry, and funding of the state's management costs. AAG Steve White prepared a summary of legal principles that govern those issues, and he attended a three-day workshop on developing fisheries. At the workshop, representatives of various state agencies drafted preliminary policies. Steve will help ADF&G staff determine which of those policies will require statutory changes. He will also help the staff draft proposed regulations for the Board of Fisheries to consider next fall.

Oil, Gas, & Mining

The Juneau Oil, Gas & Mining section was very busy in April assisting agencies in a number of matters. One large income tax case is now before the Office of Tax Appeals, with discovery underway. AAGs Jan Levy and Mike Barnhill are working on that case. Another tax appeal is in the informal conference stage, and involves considerable document review. AAG Tina Kobayashi is representing the Department of Revenue on that case. AAG Philip Reeves has been working with the State Pipeline Coordinator's Office regarding the TAPS Carriers' application for renewal of the TAPS right-of-way lease.

AAGs Lisa Kirsch and Virginia Ragle have been working hard to resolve a dispute with Exxon Mobil over the royalties due the state for Cook Inlet production. AAGs Levy and Kobayashi have also spent considerable time communicating with the Trans-Alaska Pipeline System Owners and Alyeska regarding costs that go into the TAPS tariffs.

Special Litigation

The Alaska Workers' Compensation Board granted the state's request for reimbursement of compensation and further ordered the claimant (who receives permanent disability benefits) to provide social security information to the Attorney General's Office. Failure to deliver the required information would result in suspension of benefits and possible permanent forfeiture of suspended benefits. In its second hearing of the case, following a partial remand from the court, the board found the claimant had deceived the board at the first hearing, and attempted to deceive the court and the employer on appeal, and that the board would "rely on sources other than his testimony, documents produced by him, or any other information medium that he could manipulate." AAG Kristin Knudsen represented the state, as employer, in this matter.

Transportation

M/V COLUMBIA CLAIM RESOLVED

The Juneau Transportation Section put the finishing touches on the M/V COLUMBIA contract claim. The claim settled in December 2001 after extended mediation efforts involving mediator Greg Harris. The Federal Highway Administration (FHWA), however, initially refused to participate in the settlement because it did not believe entitlement had been established by ASD, and further suggested that substantial liquidated damages should have

been pursued. FHWA initially asserted that it should be credited for over \$4,000,000 of liquidated damages. After extended discussions with the state, FHWA significantly changed its position. Ultimately, the FHWA agreed to participate in the settlement in the amount of \$750,000, and found that liquidated damages of only \$200,000 were owing. FHWA wanted to send a signal to contractors that liquidated damages were a real and viable threat, but had misgivings about the validity of the liquidated damages rates and analysis used by AMHS. AAG Peter Putzier is handling this matter.

BID PROTESTS OVER CANCELLATION OF SOLICITATION DENIED

AAG Tom Dillon assisted DOTPF's Central Region in reviewing and deciding a pair of bid protests. In the course of the procurement process, DOTPF issued an addendum to the bid documents, but mistakenly failed to send the addendum to plan holders or to identify it as an addendum on the DOTPF web site. Only one bidder acknowledged receipt of the addendum, meaning the other bidders could have been bidding on the pre-addendum project without realizing the project had changed. After bid opening, DOTPF realized its error, rejected all bids, requested new bids, and established a new bid opening date. The second time around, the contractor that had initially acknowledged receipt of the addendum was the high bidder. That contractor protested the rejection of all bids and the subsequent award to the low bidder. The DOTPF Commissioner's office, acting as an appeals office, affirmed the Central Region's decision to cancel, resolicit, and award to the low bidder.

CONDEMNATION SETTLEMENT

AAG Susan Urig helped DOTPF settle a condemnation case during a judicial settlement conference. DOTPF and the owner of a commercial greenhouse agreed to \$1.9 million as just compensation for the taking of

the greenhouse and surrounding land, including all attorney's fees, costs and interest. DOTPF acquired the property for the upgrading of the Parks Highway near Wasilla.

ARCTIC VILLAGE FAA/STATE MATCHING GRANT ISSUES RESOLVED

In January, the state discovered that Arctic Village had included a project labor agreement (PLA) in specifications for a project to rehabilitate the village airport. The PLA included an "initial hire list" to be provided by the village council to the prime contractor. People on the initial hire list were to be given a hiring preference on the project. DOTPF had provided \$115,000 in matching funds for the project.

The state was advised that the village council was going to place all village Tribal members on the initial hire list. We were asked to review this provision and concluded that the initial hire list (as the village planned to implement it) constituted national origin discrimination under the Civil Rights Act of 1964 under the Ninth Circuit's decision in *Dawavendewa v. Salt River Project Agr. Imp.*, 154 F.3d 1117 (9th Cir. 1998), and a denial of equal protection under the Alaska Constitution as construed by the Alaska Supreme Court in *State v. Enserch*, 787 P.2d 624 (Alaska 1989).

AAG Paul Lyle successfully negotiated an amendment to the grant with the village council that resolved the legal issues for the entire grant (including \$103,000 already transferred to Arctic Village), and kept the project on track for 2002. Under the negotiated agreement, the initial hire list was opened to all citizens. The council placed an advertisement in the Fairbanks Daily News-Miner informing people of the job opportunity. Applicants were permitted to apply in person or by telephone, facsimile or mail.

We also added a provision to the grant agreement that prohibits expenditure of state grant funds in a manner that would constitute

discrimination based on “race, religion, sex, color, national origin, disability, or the physical location of a person’s residence”. A violation of this provision results in automatic forfeiture of all unpaid state grant funds and reimbursement of grant funds previously paid.

Criminal Division

ANCHORAGE

Michael Bailey was indicted by a grand jury for murder in the first degree and tampering with evidence for killing his wife in 1999 and then disposing of her body. The murder culminated years of domestic violence during which police were never called.

Kerry Holcomb pled to manslaughter for the death of a two-year-old boy. An autopsy revealed the boy had five “slams to the head, coupled with evidence of shaking which caused fetal brain swelling and nerve damage.” Holcomb was babysitting for his girlfriend’s children, while she was at work, and he claimed the boy fell out of his crib. Sentencing is scheduled for August 13.

A man was charged with 17 counts of sexually abusing five girls ranging in age from six to ten. There are five counts of SAM 1, eight counts of SAM 2, three counts of attempted SAM 1, one count of attempted SAM 2, and one count of indecent exposure. The abuse occurred at the defendant’s home, in the hot tub, and on a bike trail. He gave one girl money not to tell her mother.

John Hunter waived extradition from Texas on charges of sexually assaulting five women over a six-year period, beginning in 1996. In January 2002, Hunter sexually assaulted a fifth victim. She remembered the license plate number that led back to Hunter. Blood samples were recovered on clothing from Hunter. A DNA profile bank revealed two

matches on previously unsolved rape cases (1997 and 1998). Bail was set at \$250,000.

A health care worker at a local hospital was charged with four counts of sexual assault in the first degree and one count of sexual assault in the second degree. The male victim was in a severe car accident and was in a coma for seven weeks in 1997, with brain damage. The hospital worker fondled and performed oral sex on the victim while he was unable to respond. With support of his family, the victim reported the incidents to police after two and a half years.

Jason Pritchard was sentenced to two 99-year terms (concurrent) with parole restrictions on two consolidated counts of attempted murder. In May 2001, children were lined up for early morning breakfast at the Mountain View Elementary School. Pritchard approached the children and started slashing their throats with a fillet knife. Police response was quick and Pritchard was cornered in a classroom. A teacher was restraining Pritchard from further attacking a boy who had already been slashed. Pritchard was found guilty but mentally ill by the sentencing judge.

BARROW

After over four and one-half years in Barrow, Mary Fischer will be transferring to Anchorage at the end of May. She will begin working in the DA’s office on June 10th. Replacing her is Tom Temple, from the Anchorage office.

BETHEL

The Bethel grand jury handed down two indictments for first degree murder. Three people were indicted for sexual assault. Two were indicted for felony assault. Six people were indicted for manufacture, sale, or importation of alcohol, and two were indicted for felony DWI.

Jean Seaton (from Fairbanks) and Dennis Cummings (from Anchorage) started work in the Bethel office on April 1.

Gregg Olson conducted four hours of training for Emmonak, Alakanuk, Kotlik, and Nunam Iqua Village Police Officers and Tribal Police Officers. The training was set up by Magistrate Darlene Johnson of Emmonak and conducted with Trooper Perry Barr of the Bethel Post. The troopers provided transportation to and from Emmonak.

FAIRBANKS

Scott Mattern assumed the position of Chief Deputy following the retirement of Pat Doogan. In true Fairbanks style, Pat's retirement dinner included the roasting of a pig in the office parking lot.

Jay Hodges and Jeff O'Bryant secured guilty verdicts in two homicide trials this month. Nicholas Danico was sentenced to 99 years in jail for the New Year's Day stabbing and strangulation murder of a woman. In spite of his young age (21), the court found sufficient aggravating facts to impose the maximum sentence.

The grand jury re-indicted two men for the sexual abuse of a 14-year-old runaway, who was comatose with a blood alcohol level of .30% by the time she got to the hospital. The charges were earlier dismissed for failure to prove the victim's age at grand jury, even though there was a photograph of her, a witness who said she "looked 12," and statements from the defendants that she looked "at least 15." The victim was unable to testify at either hearing, but a certified copy of her birth certificate was used at the second hearing. Earlier this month, a 30-year-old man from Anchorage was sentenced on charges involving the same victim.

KENAI

Only in Kenai (a true story):

At a recent district court arraignment, a defendant wanted to talk to the ADA about why his case should be dismissed. The defendant claimed there was a violation of his rights because the officer who served him his summons was in plain clothes. When he was told that there was no law prohibiting officers from wearing plain clothes, the defendant got indignant, whipped out the summons, pointed a finger trembling with outrage at the top of the summons and said "Well, then why does it say Uniform Summons and Complaint at the top?"

It took a Kenai jury less than two hours to convict Jamar Howard of forgery in the second degree (signing a traffic ticket in someone else's name), false information, resisting arrest and NVOL. Howard's little crime spree began when he was stopped for going 98 in a 55 mph zone. Howard faces a minimum of two years to serve. Sentencing is set for August.

Nancy Bisbee was convicted of theft in the third degree after a jury trial. Bisbee had stolen three cartons of cigarettes from her employer by using her own mother to steal them while she pretended to collect the money at the store checkstand. A jury convicted Gene Bock of vehicle theft I after a two-day trial. Judge Link sentenced 17-year-old Peter Basargin to the presumptive eight years incarceration after being convicted by a jury of sexual assault in the first degree in January.

KETCHIKAN

In the only jury trial in Ketchikan in April, a jury found Joshua Anderson and Terry Simpson not guilty of murder in the second degree, manslaughter, and robbery in the first degree, but guilty of theft in the second degree. The victim, Steve Perry, was under psychotropic medication and had a fetish of smelling men's socks. Anderson and Simpson decided to take advantage of Perry by agreeing to let him smell their socks if Perry paid them money but they reneged on the deal after they were paid. At trial, Anderson claimed that Perry had grabbed his groin, so Anderson punched him in the face,

knocking him down stairs and breaking his skull. He claimed that they then stole the victim's money to get even. The trial judge allowed the defense to get into evidence Perry's psychiatric record and have the jail superintendent testify about Perry's reputation at the jail.

Brock Charles was indicted for murder in the second degree for beating a Ketchikan man to death on the early morning hours of Christmas 2001.

Three Ketchikan men were indicted for burglary in the second degree and theft in the second degree for breaking into a storage unit and stealing about 70 rifles. Others were indicted for assault in the third degree, misconduct involving controlled substance in the fourth degree, failure to appear, forgery in the second degree, and burglary.

KODIAK

A 30-year-old Kodiak woman was sentenced to five months in prison and placed on probation for five years following her conviction for misconduct involving a controlled substance in the third degree, a class B felony. This defendant had sold one Oxycontin pill to an undercover informant during a fall drug investigation.

A 32-year-old Kodiak man rejected probation and was sentenced to a flat time sentence of one year to serve following his conviction for misconduct involving a controlled substance in the fourth degree, a class C felony. This defendant had been charged with possession of cocaine after admitting that an "empty" bindle found in his apartment was indeed his. Upon testing, this "empty" bindle was found to contain a small amount of cocaine.

A 38-year-old Kodiak man was sentenced to two years in prison, with 18 months of that suspended, following his conviction for assault in the third degree, a class C felony. This defendant had attempted to strangle his

domestic partner, which caused bruising on her neck. Under the circumstances of this case his hands were deemed to be "dangerous instruments" and he was charged with inflicted physical injury by means of a dangerous instrument.

A 34-year-old Kodiak man was sentenced to a flat time sentence of 24 months incarceration and fined \$5,000 following his conviction for felony driving while intoxicated. Although this defendant only had two prior DWI offenses on his record, his case was aggravated by the fact that he had previously been convicted of another felony offense.

PALMER

The murder trial of Suzette Welton started on April 1. Welton, 38, is accused of drugging her two sons and setting fire to a duplex where she lived to obtain \$200,000 in life insurance proceeds. 14-year-old Samuel Welton died in the fire, and his 16-year-old brother, Jeremiah, escaped by jumping to the ground from a second story window. The prosecution's case continued through the month of April. The trial is expected to conclude at the end of May.

A Palmer grand jury indicted Thomas Horsey for the murder and robbery of Jane Sasseen. Horsey, a crack addict, went to the home of Mrs. Sasseen, an elderly widow who lived alone, with the intent to burglarize the well-kept house. When Mrs. Sasseen answered the door late in the evening, he told her he was there to rob her. She went to the closet to give him money from her purse. When she did not move fast enough for him, he shot her in the forehead at point blank range. An alert bank official alerted AST several days later when a clerk noticed Mrs. Sasseen's ATM card was still being used after her death. An AST stakeout of several ATM's led to Horsey's arrest. The state is seeking a mandatory 99 years for murder during the course of a robbery under AS 12.55.125(a)(4).

The Palmer office successfully tried a 16-year-old boy under the new minor consuming law. According to a press report, it was the first such trial in the state. After listening to the testimony of the arresting officer and the defendant's grandmother, the six-member jury returned a guilty verdict after deliberating for less than 30 minutes.

As the jury selection was set to begin, Darin Jones elected to enter a plea to murder in the second degree. Jones drove from Anchorage to the Valley with his best friend, Shane Rogers, in August 2000. During that day, Jones and Rogers were repeatedly using methamphetamine. At some point, an argument started that led to Jones brandishing a Glock 9 mm semi-automatic he carried in his car. The defendant stated, in his three Mirandized statements to police, that the victim grabbed the gun and it went off. The bullet passed through Rogers' t-shirt from left to right on the front, never even scratched him, and shattered the passenger side front window. Unfortunately for the defense theory of manslaughter, the gun "went off" a second time, with that bullet passing through the victim's body, perforating the aorta. Jones dumped the body outside of Sutton and returned to Anchorage where he ran out of gas. Jones abandoned the car in the middle of the road with the lights on, his driver's license on the driver's seat, and Shane Rogers' wallet and ID on the passenger seat on top of broken glass and blood.

A father and son were ordered to pay fines, restitution, surcharges and forfeit rifles worth nearly \$30,000 for taking two sub-legal bull moose near Skwentna. Magistrate David Zwink termed the defendants' behavior "arrogant" in using their airplanes and cabins to take advantage of the difficulty of FWP enforcement in remote areas. Jess Snider, age 47, and his father Robert, age 73, both of Anchorage, had killed the two moose in separate hunts in September 2000 and each had covered up the illegal kills. Jess, hunting partner, Nelson Defendorf, had earlier been

sentenced to restitution and a fine totaling \$2,500 in exchange for his agreement to testify. In addition, Jess was ordered to serve five days in jail. Both have additional suspended fines, suspended jail and five years probation. Both have lost their hunting licenses, Robert for two years and Jess for five years.

OSPA

(Office of Special Prosecutions & Appeals)

Eric Aarseth, the statewide fish and game prosecutor, will transfer to the Anchorage Special Litigation section, Civil Division, in May.

Prosecution News

Raejean Bonham changed her plea to one consolidated count of misleading securities filings. Bonham operated one of the most notorious pyramid schemes in Alaska's history by encouraging people to invest large sums of money in World Plus, a business that was supposed to make money by buying and selling frequent flier mileage. Unfortunately, later investors ended up funding the early investors' returns, leaving the later investors with nothing. Sentencing is set for July 31, before Judge Wolverton.

Susan Karge entered a plea of no contest to falsifying business records. Karge had been working as the bookkeeper of Hap Enterprises, a construction firm, from 1994 through 1998. During that time, she and the manager falsified entries in the account ledgers, making it appear that vendors were being paid when the checks were actually being written to the manager. An estimated \$200,000 was stolen in this manner. Sentencing is set for August 14.

Lance Waldren, a former sergeant with the Ketchikan Police Department, pled no contest to criminal trespass in the first degree for entering a house without permission. Waldren

was sentenced to 180 days with 170 days suspended. Waldren has the option of doing 80 hours of community work service in Ketchikan instead of serving the jail time.

Jeffrey Gottlieb was sentenced to a composite sentence of seven years in jail and ten years of probation. Dr. Gottlieb had previously been convicted of 234 charges relating to his medical practice and fraudulent Medicaid billings. Gottlieb was ordered to pay \$240,000 in restitution to the state Medicaid office.

Civil Litigation News

Sex offender registration update. In January of this year, U.S. District Court Judge Holland enjoined the state's enforcement of Alaska's sex-offender law for a class of defendants who had single sex-offense convictions arising from conduct that occurred before August 10, 1994. In an appeal of the preliminary injunction issued by Judge Holland, the state argued to the Ninth Circuit Court of Appeals that, in light of his express recognition that the law does not require in-person verification, Judge Holland erred in assuming that *Doe v. Otte* was controlling. (In *Doe v. Otte*, the Ninth Circuit relied heavily on a purported in-person verification requirement to hold that the sex-offender registration law violated the ex post facto clause.) The U.S. Supreme Court has granted the state's petition for certiorari from *Doe v. Otte* and briefing in that case is proceeding. *Godfrey v. Doe*, No. 02-35208.

Petitions & Briefs of Interest

Briefs of Interest

Jurisdiction over offenses on "the high seas." Under AS 44.03.010(2), the state has jurisdiction over offenses committed on "the high seas" to the extent that the United States would have jurisdiction over them. The state argues that when this statute was enacted in

1959 the common understanding of the term "high seas" included the territorial seas of foreign nations. Based on this argument, the state argues that Judge Weeks erred when he granted the defendant's motion to dismiss a prosecution as lacking jurisdiction because the defendant's sexual assault of the victim had occurred on a state ferry travelling in Canadian territorial waters. *State v. Jack*, No. A-8062.

Appellate brief - frivolous issues. The state argues to the Alaska Supreme Court that a defense lawyer who concludes that a defendant's appeal would be frivolous must file the brief required under *Anders v. California*, rather than a "brief" that simply summarizes the trial court proceedings and cursorily identifies "arguable" appellate issues. Alternatively, the state argues that a defense lawyer should file a brief on the merits even though the lawyer views the issues as frivolous. *Johnson v. State*, No. S-10261.

Least-serious conduct mitigating factor. The defendant took his friends' 13-year-old daughter Christmas shopping with him and then back to his home, where he plied her with alcohol until she passed out. She awoke to find him having sexual intercourse with her. Judge Patricia Collins found that the least-serious mitigating factor applied to this first-degree sexual assault because, but for the fact that the 13-year-old victim could not legally obtain alcohol herself, the victim's incapacitation would not have been a result of the defendant's conduct. The state argues to the court of appeals that Judge Collins' imposition of a mitigated five-year sentence on the basis of this reasoning was clearly mistaken. *State v. Armstrong*, No. A-8119

Court Decisions of Note - Alaska

Statute and Rule Interpretations

Mandatory 99-year sentencing provision.

The Alaska Supreme Court upheld as constitutional AS 12.55.125(a)'s 99-year mandatory sentencing provision for first-degree murders involving certain aggravating circumstances (such as the victim was a peace officer or the defendant subjected the victim to torture). *State v. Malloy*, Op. No. 5560 (Alaska, May 3, 2002).

Minimum DWI jail terms and Nygren credit.

The Alaska Court of Appeals held that the minimum jail terms for DWI offenses specified in AS 28.35.030 could be satisfied by time spent in a residential treatment facility for which the defendant obtains Nygren credit. *State v. Judson*, Op. No. 1798 (Alaska App., April 12, 2002).

Original applications. The Alaska Court of Appeals interpreted Appellate Rule 404 as precluding an original application where the time for filing an appeal has elapsed. *Lambert v. State*, Op. No. 1800 (Alaska App., April 26, 2002).